

**JOSEPH B. COLLINS**  
Claimant

**FRANK CONSTRUCTION COMPANY**  
Respondent

**ITT HARTFORD**  
Insurance Carrier

On November 18, 1998, claimant slipped and fell off a truck while performing duties for respondent. His feet went up over his head and he landed on his head, neck, and shoulders. On the way down, his left arm glanced off the fuel tank and claimant "slammed" into the ground. Respondent sent claimant first to StatCare where claimant saw a physician's assistant and claimant was then referred to Dr. Michael J. Johnson. Claimant testified that after this fall he felt numbness in both his right and left arms but the left was worse. Dr. Johnson sent claimant to Dr. Pedro A. Murati for a nerve conduction study. The findings from the study, done December 23, 1998, approximately one month after claimant's fall, were consistent with bilateral carpal tunnel syndrome and bilateral polyneuropathy affecting the ulnar nerve. Claimant was subsequently seen by a number of other physicians and treated for other

conditions, including neck and shoulder injuries, and eventually came under the care of Dr. Melhorn. Dr. Melhorn recommends surgery for both upper extremities.

Respondent contends the evidence does not support a finding that the upper extremity injuries arose out of claimant's employment and further contends claimant injured his upper extremities in subsequent employment with Domino's Pizza where he delivered pizza. Respondent points out that Dr. Melhorn, who provides the only medical opinion on causation, attributes a portion of the injury to claimant's left upper extremity to the fall at work and a portion to the work for Domino's. But Dr. Melhorn says the injury on the right does not appear to be caused by the fall. It is clear from Dr. Melhorn's records that he bases this conclusion on the history he was given, but he is not specific about what aspects of the history he is relying on.

In spite of Dr. Melhorn's opinions, the Board agrees with the decision by the ALJ. First, the Board agrees that the work at Domino's is not a likely cause. Claimant told his new employer about his injuries before he started. When some of the duties caused symptoms, those duties were promptly eliminated. The history of the accident and subsequent symptoms given in claimant's testimony provide no reasonable basis for distinction between the left and right upper extremities. The fact claimant's left elbow glanced off the fuel tank would not appear to explain the carpal tunnel syndrome. According to claimant's testimony, he did not have numbness in the upper extremities before the fall. He had bilateral numbness after the fall and the treating physicians recommended bilateral testing. The testing confirmed bilateral ulnar and median nerve problems before claimant left employment with respondent. Those problems continued through the duration of claimant's employment with respondent.

The facts as developed to this point present a difficult question. For the reasons given, the Board has determined the Order should be affirmed. This finding is not binding in the full hearing on the claim and is subject to modification on a more complete presentation of the facts and medical opinions.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on April 10, 2000, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 2000.

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BOARD MEMBER

c: Robert A. Anderson, Ellinwood, KS  
P. Kelly Donley, Wichita, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director